

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: James A. Most, M.D.

Docket No. MPN 94-0902

STIPULATION AND CONSENT ORDER

NOW COME James A. Most, M.D. (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and Assistant Attorney General James S. Arisman, and agree and stipulate as follows:

1. James A. Most, M.D., Respondent, holds Vermont Medical License Number 042-0010395, issued on May 2, 2002.
2. Jurisdiction vests with the Vermont Board of Medical Practice (Board), pursuant to 26 V.S.A. §§ 1353, 1354, & 1398 and 3 V.S.A. §§ 809 & 814(c).

I. Background.

3. The Vermont Board of Medical Practice on September 25, 2002 opened a complaint and investigation related to a serious traffic accident in Newfane, Vermont in which Respondent was involved. Respondent's alleged use of alcohol was a subject of the investigation of this accident by authorities.

4. Respondent has cooperated fully with the Board's investigation of this matter. Respondent has met with the assigned Board investigative committee and through counsel has provided the Board with information needed for consideration of the appropriate means of disposition of this matter.

Office of the
ATTORNEY
GENERAL
109 State Street
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05609

II. Prior Interim Orders.

5. By Stipulation and Interim Consent Order dated October 2, 2002 Respondent agreed to the entry by the Board of an order summarily suspending his license to practice medicine in the State of Vermont for 60 days and agreed to a series of recovery steps that included referral by the Board of his name to the Vermont Practitioner Health Program (VPHP), i.e., an assessment and treatment program of recovery operating under the auspices of the Vermont Medical Society. Effective December 4, 2002 Respondent agreed to extension of the above agreement for an additional 30 days to allow for further review of the facts and circumstances in this matter. For the same reasons, the parties subsequently agreed to a further extension of the October 2, 2002 order to January 31, 2003.

III. Current Circumstances.

6. Respondent entered inpatient treatment with the Conifer Park program of Glenville, New York on October 22, 2002. While at Conifer Park, he fully cooperated with treatment and successfully completed the alcohol dependency treatment program there. He was discharged on November 11, 2002. The assigned investigative committee has reviewed information from practitioners involved in treating Respondent and has concluded that it is now appropriate to impose conditions of licensure that are intended to protect patients and the public and to provide for Respondent's long-term recovery.

7. Respondent has not practiced medicine since on or about September 22, 2002. After that date Respondent voluntarily began recovery efforts, including his treatment at Conifer Park and ongoing participation in the Vermont Practitioner Health Program. Respondent's peers and several patients and former patients have communicated directly with the Board and have

expressed support for Respondent. Respondent has expressly committed himself to sobriety and to remaining abstinent from alcohol.

8. Respondent has represented to the assigned Board investigative committee that he has at no time practiced medicine while under the influence of alcohol. He has indicated that it is his belief that his use of alcohol at other times, when he was not engaged in the practice of medicine, had not negatively affected his care of patients. The Board's investigation of this matter produced no evidence or information that contradicts Respondent's assertions.

9. Respondent has not previously been the subject of disciplinary action in the State of Vermont or elsewhere with regard to his license to practice medicine.

IV. Respondent's Medical License Shall Be Conditioned.

10. Respondent seeks to pursue a program of recovery from his use of alcohol. Respondent also wishes to return to the practice of his profession. Thus, Respondent does not contest the facts set forth above in paragraphs 3 through 7, above, and agrees that the Board of Medical Practice may adopt and enter these paragraphs as uncontested findings of fact in this matter.

11. Respondent agrees and admits that had the State of Vermont filed a specification of charges in this matter and satisfied its evidentiary burden at hearing, the Board could enter a finding adverse to him, pursuant to 26 V.S.A. § 1354 and/or § 1398, in light of the facts set forth in paragraphs 3 through 7, above. Thus, Respondent agrees that the Board of Medical Practice may adopt and enter as its findings and/or conclusions this paragraph and those set forth above as a basis for the actions agreed to herein by the parties.

12. Respondent acknowledges that he is knowingly and voluntarily agreeing to this Stipulation and Consent Order. He acknowledges that he has had advice of counsel regarding the matter presently before the Board and advice of counsel in reviewing this Stipulation and Consent Order. Respondent is satisfied with all representation provided to him by counsel.

13. Respondent agrees and understands that by executing this document he is waiving any right to be served with formal charges and to challenge the jurisdiction and continuing jurisdiction of the Board in these matters. Respondent understands that by executing this document he is waiving his right to a hearing and to all his Due Process rights associated with such hearing, including the right to be present while any evidence the Board might seek to introduce was presented, to cross-examine witnesses presented by the Board, and to present evidence on his own behalf. 26 V.S.A. § 1356; 3 V.S.A. §§ 809 & 814.

14. The parties to this Stipulation and Consent Order agree that appropriate Board action in this matter shall consist of the following:

A. Suspension of Respondent's license to practice medicine for a period of 24 months from the effective date of the Board's order approving this agreement, all STAYED, but for a period of actual suspension of Respondent's license of five months, beginning October 2, 2002.

B. Respondent may resume the practice of medicine on March 3, 2003, subject to Board review and approval of this Stipulation and Consent Order. The remaining period of suspension of Respondent's medical license shall be STAYED, subject, however, to full compliance with all material terms and conditions of licensure set forth herein.

C. Respondent's license to practice medicine shall be designated as "Conditioned", and Respondent shall comply fully and in good faith with the additional terms and conditions of licensure set forth below, wherever he may practice, until such time as he

has been relieved of all conditions herein by express written order of the Vermont Board of Medical Practice.

D. Respondent understands and agrees that failure by him to comply with the terms and conditions set forth herein shall, if established by the State's proof, provide a legally sufficient basis under this agreement for suspension of Respondent's license to practice medicine for the underlying period of suspension that remains, and such other disciplinary action as the Board may deem appropriate under the circumstances.

V. Conditions of Licensure.

A. General.

15. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees to accept and be bound by these while licensed to practice medicine in the State of Vermont or elsewhere and to be bound by these until such time in the future as he may be expressly relieved of these conditions, in writing, by the Vermont Board of Medical Practice. The Board, in its sole discretion, may consider a petition from Respondent for modification of these conditions, no sooner than 12 months after the effective date of this Stipulation and Consent Order, unless a petition for modification is otherwise provided for herein.

16. Respondent's license to practice medicine in the State of Vermont shall be conditioned for a minimum of five years, following entry of the Board's Order approving the terms of this agreement. Respondent's Vermont license to practice medicine shall be "Conditioned" until such time as the Board of Medical Practice has removed all terms and conditions imposed upon his medical license.

17. Respondent agrees that he shall abide by and follow all treatment and aftercare recommendations, plans, or contracts that are presented to him by evaluators, assessors,

practitioners, recovery programs, and/or entities that may care for or treat him. He expressly agrees that he shall promptly sign any and all consents and/or waivers of confidentiality as to his history, medical records and information, dependency, diagnosis, care, and treatment so as to permit full and complete disclosure to the Board for the purpose of permitting the Board to monitor and review his recovery and ability to practice medicine safely. The parties agree that all such information shall be deemed confidential medical information for care and treatment purposes and/or Board investigation of his compliance with this agreement. Absent further public proceedings in this matter, all such information shall be treated in accordance with the immediately preceding sentence.

B. Evaluation.

18. Respondent voluntarily has undertaken early care and treatment at Conifer Park, Glenville New York between October 22, 2002 and November 12, 2002. Respondent's subsequent recovery efforts have been satisfactory. To assure that an appropriate recovery plan is developed, Respondent agrees that he shall promptly undergo an additional, comprehensive alcohol dependency evaluation by a psychiatrist or PhD. psychologist, the results of which shall be provided in writing to the Board and his treatment providers. The Board agrees that it shall give due consideration to Respondent's current treatment provider(s) for such purposes. Such evaluation shall expressly include diagnosis, prognosis, identification of short- and long-term treatment needs, assessment as to dependency needs, and a plan for treatment and recovery. Respondent agrees he shall continue his recovery efforts in accordance with his current contract or agreement with the Vermont Practitioner Health Program (or comparable provider(s)) and any modifications thereof made pursuant to this Stipulation and Consent Order. Respondent agrees

to bear all costs and shall make all such payment arrangements for any evaluations, assessments and treatment called for in conjunction with his recovery plan.

C. Recovery Efforts.

19. Respondent shall continue participation in good faith in care and treatment for alcohol use under the auspices of the Vermont Practitioner Health Program or a similar entity. Respondent shall promptly notify the Vermont Board of Medical Practice if he ceases or interrupts his participation in such a program. Respondent shall not cease, terminate, or interrupt his participation in any such program of treatment and recovery without the advance written approval of the Board, following presentation of a written petition from him in this regard. The Board shall retain sole discretion to approve or disapprove any such petition.

20. Respondent acknowledges and agrees that all terms herein and all reasonable requests of the Board of Medical Practice related to monitoring his recovery and treatment shall supersede and prevail over any and all provisions of his contract with the Vermont Practitioner Health Program (and over any related policies or procedures of that program) or other similar entity that may be deemed to be in conflict or to the contrary. Respondent acknowledges that his good faith participation in a recovery program or in coordinated efforts involving monitoring, care, and treatment related to his recovery is a material term of this agreement.

21. Respondent agrees that the Board of Medical Practice, in its sole discretion and after consultation with Respondent or his attorney, may approve or disapprove any current or proposed providers, contractors, or individuals to be involved in Respondent's program of recovery or in coordinated efforts involving monitoring, care, and treatment. Any approval by the Board in this regard may be withdrawn at any time after consultation with Respondent, in the Board's sole discretion. Should such approval be withdrawn, the Board will promptly seek to

provide reasonable, non-financial, assistance to Respondent to aid him in obtaining an alternative source(s) of monitoring, care, and treatment.

D. Abstinence.

22. Respondent agrees to abstain from consuming alcohol of any kind or amount, regardless of circumstances. Similarly, Respondent agrees not to use, consume, or be under the influence of mind or mood altering substances, other than pursuant to a valid prescription from a licensed medical practitioner.

23. Respondent shall immediately report, orally and in writing, to the Vermont Board of Medical Practice and to others providing recovery care and treatment to him any alcohol or substance use or consumption by him, regardless of amount, duration, or circumstances, with an explanation as to such occurrence.

E. Collection and Testing.

24. Respondent agrees that he shall provide breath, hair, urine samples, or other samples for collection and testing at least twice a week until this condition is modified. All such collections shall be random and shall not occur in conjunction with any regularly scheduled appointments for counseling, care, or treatment. Collection and testing shall be provided by entities organized and operating independently of any recovery treatment or care provider. The Board in its sole discretion may approve or disapprove any entity providing collection and/or testing services.

25. Should circumstances warrant, the Board may require an increase in the frequency of such sample collections or direct that collections occur on certain occasions or at certain locations. Each sample collection shall be random and shall be directly observed. Respondent shall bear all costs. The frequency of collection, at the Board's sole discretion, may be reduced at a

later date, upon Respondent's petition, subject to approval or disapproval by the Board. Respondent agrees that he shall not present any petition to the Board in this regard until the passage of at least 12 months after the effective date of this agreement. The Board in its sole discretion may approve or disapprove such a petition, and may withdraw at a later date any approval previously granted of a reduced frequency of collection.

F. Practice Site and Employment; Supervising Physician.

26. Respondent agrees that he shall practice medicine only in a structured group practice setting in which he shall have frequent and regular contact and interaction with other physicians. Respondent agrees that while so employed he shall maintain regular communication with his Supervising Physician and agrees that other practitioners within his practice setting may communicate with his Supervising Physician and with the Board regarding his care of patients and Respondent's ability to practice medicine safely. The Supervising Physician shall regularly meet with Respondent to discuss his practice, care of patients, Respondent's recovery, and any problems, concerns, or questions related to these matters or Respondent's compliance with this agreement.

27. Respondent agrees that he shall petition in advance for Board approval of his proposed employer, his proposed practice site, and his Supervising Physician.

a. The Southwestern Vermont Health Care Corporation shall be approved as employer, upon acceptance of this Stipulation and Consent Order by the Board. The Board reserves the right, in its sole discretion, to withdraw such approval at a later date should it reasonably determine that it would be inconsistent with the terms of this agreement for such approval to continue.

Respondent agrees to present to the Board a petition identifying the actual location where he shall practice and his proposed employer.

b. Mark Novotny, M.D., shall be approved to act as Supervising Physician for Respondent, upon acceptance of this Stipulation and Consent Order by the Board. The Board reserves the right, in its sole discretion, to withdraw such approval at a later date should it determine that it would be inconsistent with the terms of this agreement for such approval to continue. Respondent agrees to present to the Board a petition identifying any practitioner who may later be proposed to act as Supervising Physician.

28. The parties have entered into this agreement with the understanding that Respondent will be employed by the Southwestern Vermont Health Care Corporation and that his practice site will be the Northshire Medical Center. If for some reason, other than a breach of this agreement, Respondent's employment at the Northshire Medical Center is not renewed or later terminated, the parties agree to modify this agreement as necessary to reflect Respondent's changed circumstances insofar as such modification is consistent with all other terms and conditions herein. It is agreed by the parties that Respondent may petition the Board for consideration and possible approval of a different employer or practice site, as may be required in the future. Respondent agrees that the Board in its sole discretion may approve or disapprove such a petition for modification.

29. Respondent agrees that he shall provide a complete copy of this Stipulation and Consent Order to any employer and supervisor for whom he works or to any prospective employer, any State medical board or other licensing authority in any location or jurisdiction

where he may seek to practice or where he may make application, so long as this agreement remains in effect.

G. Number of Hours to Be Worked Per Week.

30. Within any single month Respondent agrees he shall perform clinical duties no more than an average of 45 hours per week. Respondent shall be personally responsible for carefully adhering to this limitation. Respondent agrees he shall confer with his employer and shall endeavor not to work on the day following any night or weekend when he is "on-call". Respondent agrees to personally inform his peers of these provisions and to reiterate this information if necessary at a later date. The Parties agree that Respondent may petition the Board for a modification of the working hours limitation after a period of 12 months from the effective date of this agreement.

H. VPHP Treatment; Other Matters.

31. Respondent agrees that he shall fully and in good faith participate in any plan of treatment developed pursuant to the terms of this agreement and his treatment contract or arrangement with VPHP or other similar entity so long as this agreement remains in effect or until he is relieved of this condition. The parties agree that Respondent shall consult with and make use of the services of the VPHP program or similar entity and that he shall comply fully and in good faith with all recommendations made to him by the VPHP program or similar entity. Respondent agrees that the Board must approve the terms of his treatment contract, plan, or arrangement with VPHP or similar entity. The Parties agree to work with each other and to consult with VPHP or similar entity to craft an appropriate treatment plan. The Parties further

agree that the Board shall have the sole discretion to approve or disapprove of any terms of such treatment plan or individual providers. Respondent expressly agrees that he shall not reduce or cease participation in any treatment provided for in the contract, plan, or arrangement with VPHP or similar entity without the express, prior written approval of the Board, based upon a written petition from him. Respondent agrees that he shall not present, and the Board shall not consider, any such a petition prior to the passage of at least two years from the effective date of this Stipulation and Consent Order.

32. Any petition for modification shall be accompanied by a written assessment from Respondent's care provider(s) describing Respondent's participation in recovery efforts, past and current treatment needs, evidence of progress, and an opinion as to whether the frequency of Respondent's involvement in therapeutic care and treatment sessions may be decreased, consistent with protection of the health, safety, and welfare of the public and without jeopardizing Respondent's recovery. Any petition from Respondent shall be in a manner and form acceptable to the Board. The Board in its sole discretion may approve or disapprove such a petition from Respondent.

33. The contract, plan, or arrangement with VPHP or similar entity shall include the names of any practitioner chosen to provide treatment. The choice of any treatment provider shall be subject to Board review and approval as set forth in Paragraph 30.

34. Respondent shall promptly seek advance Board approval of any practitioner chosen to serve as his Primary Care Physician. Respondent agrees that such Primary Care Physician may communicate freely with any other physician or practitioner providing treatment and care to Respondent. Respondent's understands and agrees that the Board may (a)

communicate freely and without limitation with his Primary Care Physician; and (b) obtain and review Respondent's medical records in their entirety, upon request.

I. Follow-Up Meetings with Investigative Committee.

35. Respondent agrees he shall meet in person with the North Investigative Committee, to which this matter is assigned, in approximately six months and every six months thereafter, unless otherwise arranged or until he is relieved of this condition.

VI. Other Terms and Conditions as to Implementation.

36. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

37. This Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void. However, should the terms and conditions of this Stipulation and Consent Order be deemed acceptable by the Board, the parties request that the Board enter an order conditioning and restricting Respondent's license to practice medicine as set forth above and that such license be subject to each of the terms and conditions as set forth herein.

38. The parties agree that this agreement is not intended to affect or pertain to any other proceeding that may involve Respondent in another legal forum. Respondent acknowledges that the Board shall retain the right to review the outcome of any such other proceeding and consider all evidence adduced.

39. Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce all terms and conditions of this Stipulation and Consent Order, subject to the terms of 26 V.S.A. § 1354(25) or other authority.

Dated at Montpelier, Vermont, this 30th day of January, 2003.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:

James S. Arisman
JAMES S. ARISMAN
Assistant Attorney General

Dated at Bennington, Vermont, this 30th day of January, 2003.

James A. Most
JAMES A. MOST, M.D.
Respondent

Dated at Bennington, Vermont, this 27th day of January, 2003.

David F. Silver
DAVID F. SILVER, ESQ.
Counsel for Respondent

FOREGOING, AS TO JAMES A. MOST, M.D.
APPROVED AND ORDERED
VERMONT BOARD OF MEDICAL PRACTICE

Margaret Funk Martin	_____	_____
Margaret Baltman	_____	_____
John A. Tunney	_____	_____
Ed. [unclear]	_____	_____
[unclear]	_____	_____
David W. [unclear]	_____	_____

DATED: February 5, 2003

ENTERED AND EFFECTIVE: February 5, 2003

Draft 1/03; By James S. Arisman, AAG; Not Approved by BMP Until Executed Above